



**City of Bellevue
Development Services Department
Land Use Staff Report**

Proposal Name: Jimmy Sy Short Plat II (KC L12S0003)

Proposal Address: 15018 SE 44th St. (KC Parcel # 2203500475)

Proposal Description: The applicant requests Preliminary Short Plat approval to subdivide a 0.2461 acre (10,718 square feet) parcel in two, single-family residential parcels. Application is vested to King County regulations in effect, March 29, 2012 under King County file # L12S0003.

File Number: 12-126575-LN

Applicant: Chad Allen, Encompass Engineering and Survey

Decisions Included: Preliminary Short Plat
(Process II. LUC 20.45B & Interlocal Agreement Between the City of Bellevue and King County Relating to the South Bellevue Annexation, Effective June 1, 2012, Bellevue Clerk's Receiving No. 48794)

Planner: Reilly Pittman, Planner

**State Environmental Policy Act
Threshold Determination:** Exempt

Department Decision: **Approval with Conditions**



Reilly Pittman, Associate Planner
Development Services Department

Application Date: March 29, 2012 with King County
Notice of Application Publication: May 30, 2012 and June 1, 2012 by King County
Decision Publication Date: January 23, 2014 by City of Bellevue
Project Appeal Deadline: February 6, 2014 with City of Bellevue

For information on how to appeal a proposal, visit Development Services Center at City Hall or call (425) 452-6800. Appeal of the Decision must be received in the City's Clerk's Office by 5 PM on the date noted for appeal of the decision.

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Attachments

1. King County Short Plat Staff Report and Recommendation – Enclosed
2. King County Hearing Examiner Decision for G-Box Short Plat – Enclosed
3. Plans, Reports, Application Forms, Communications – In File

I. Proposal Description

The applicant is proposing to subdivide a 0.2461 acre (10,718 square feet) parcel into two, single-family residential parcels. By itself, the property achieves one unit of base density after calculation under the County's R-6 zoning designation. An additional dwelling unit was obtained through King County's Residential Density Incentives (RDI), Chapter 21A.34 KCC. The application is vested to King County regulations in effect on March 29, 2012 under King County file # L12S0003 in accordance with Chapter 58.17 RCW and the Interlocal Agreement Between the City of Bellevue and King County Relating to the South Bellevue Annexation, Effective June 1, 2012, Bellevue Clerk's Receiving No. 48794 ("ILA").

II. Consistency with Interlocal Annexation Agreement (Clerk's Receiving No. 48794):

At the time the application was filed with King County on March 29, 2012, the property was located in unincorporated King County. On June 1, 2012, the property was annexed into the City of Bellevue.

In accordance with the ILA, land use permits filed with King County prior to the annexation effective date shall be reviewed by King County up to the point that King County is ready to make a final decision. King County shall then forward their recommendation to the City of Bellevue. King County forwarded their recommendation on the proposed subdivision on August 1, 2012.

The City of Bellevue has reviewed King County's attached recommendation and is issuing the final decision. Any subsequent appeals on this decision will be processed by the City of Bellevue Hearing Examiner.

III. Public Notice and Comment

Application Date:	March 29, 2012 with King County
Completeness Date:	March 29, 2012 by King County
Public Notice (500 feet):	May 30, 2012 and June 1, 2012 by King County

The Notice of Application for this project was publicly noticed by King County on May 30, 2012 in the Seattle Times and June 1, 2012 in the Bellevue Reporter. A Land Use Notification sign was also erected at the site.

Several comments were received from the public as of the writing of this report. The comments are included in the project file that was forwarded to the City by King County. The commenters are included as "parties of record" and will receive notice of the final decision. An additional party of record was added after the file was transferred to the City.

The comments are summarized and grouped by topic for brevity below with the staff response following.

A. Property does not achieve a second dwelling unit

Comment Summary: Commenters stated that the property does not qualify for a second dwelling unit due to incorrect rounding of fractional dwelling units in the density calculations of KCC 21A.12 and KCC 21A.34.

Response: King county staff determined that the project qualifies for 2 units through the residential density incentives (RDI) in KCC 21A.34.040. The incentives allow a property to achieve a higher density than would otherwise be allowed by basic zoning density by providing specified benefits. KCC chapter 21A.34 instructs how to calculate the total dwelling units allowed through participation in the RDI. The county determined that the base density is 1.4766 units. Based on the energy conservation benefits selected by the applicant, the density incentive added is 0.15 or 0.10 which increases the base density to 1.63 or 1.58 respectively. Fractional dwelling units are instructed by the County code to be rounded up to the next whole unit if the fraction is .5 or greater. The total dwelling units achieved by the property through the RDI rounds up to 2 units.

The submitted comment contends the rounding of fractional dwelling units was done improperly per the following:

- The base density should be rounded down from 1.4766 to 1 before adding the additional density achieved by the RDI.
- After adding bonus density from the RDI, the resulting total dwelling unit potential would be less than 1.5 units and only allow the property to achieve 1 dwelling unit.

City staff finds this interpretation to be incorrect for the following reasons:

- KCC 21A.12.070 does not specify that rounding must occur after calculating the base density but before adding bonus density from the RDI in KCC 21A.34. Rather KCC 21A.12.070 states that bonus density is added to the base “computed under subsection A” which does not discuss rounding.
- KCC 21A.34.050 specifically establishes an order that determines the base density, adds the bonus RDI density, and then rounds the resulting total.
- Rounding down the base density before adding the bonus density achieved by the RDI removes density that the property qualifies for based on the actual lot area.

City staff finds that the King County staff has calculated density consistent with their codes and procedures and that the property qualifies for 2 dwelling units by participation in the RDI.

B. Plat Restriction Prohibits New Lots; Restrictive Covenants; Public Benefit

Comment Summary: The Eastgate Addition Division D subdivision of 1954 created

the lot proposed to be divided by this short plat application. A note on the face of the plat restricts future subdivision. The Washington State Court of Appeals ruled in the case of *Jones v. Town of Hunts Point*, 166 Wash. App. 452, 272 P.3d 853 (2011) that the town of Hunts Point was required to enforce the conditions on the face of the final plat. The plat condition for the Hunts Point case is the same as the condition on the Eastgate Addition plat and therefore this short plat should not be approved.

Response: The comment references the recent case of *Jones v. Town of Hunts Point*, 166 Wash. App. 452, 272 P.3d 853 (2011). This case is an example where the Court of Appeals affirmed the Hearing Examiner's adoption of the town's interpretation of the provision and the examiner's conclusion that Hunt's Point had not abandoned the plat condition

The condition at issue in *Jones* and the Jimmy Sy short plat under consideration in this report is the same:

"No lot or portion of a lot in this plat shall be divided and sold or re-sold or ownership changed or transferred whereby the ownership of any portion of this plat shall be less than the area shown on the face of this plat.

All lots in this plat are restricted to the R-1 Resident District use governed by and subject to restrictions, rules, and regulations of the King County Zoning Resolution No. 11373 and subsequent changes thereto by official county resolution."

Unlike the City of Hunt's Point, the County abandoned its lot size requirements and requires compliance with Title 21A of the King County Code. In 2006, King County approved the G-Box LLC Short Plat (County file number L05S0046). The G-Box short plat created a new lot at 15017 SE 43rd Street which is a property just north of the Jimmy Sy property and within the same Eastgate Addition Division D plat. The short plat was appealed based on the same condition, which the appellant claimed prevented any subdivision within the bounds of the Eastgate Addition. The King County Hearing Examiner dismissed the appeal of the G-Box short plat finding in relevant part that the County had abandoned all lot size restrictions in the County's former resolutions and ordinances when the County adopted Title 21A in 1999. See Attachment 2. One other nearly identical two lot short plat was recorded in 2011 (L05S0046) on another property created by Eastgate Addition Division D.

Comment Summary: The protective restrictive covenants prohibit subdivision as they state that "no residential structure shall be erected or placed on any building plot, which plot has an area of less than 8000 square feet or a width of less than 60 feet at the front building setback line.

Response: With the adoption of Title 21A, the County abandoned all lot size restrictions from its code. The County has previously approved a short plat in the same subdivision. This short plat is allowed by KCC 21A.34.040.F where the applicant

may earn a density incentive by selecting a public benefit to provide which was “Energy Conservation” in the case of this project. As described below, compliance with the required energy conservation will be required during building permit review for each home.

Comment Summary: This subdivision proposal requires showing a public benefit to achieve the additional density allowing the creation of two lots by meeting standards in KCC 21A.34.040. The project has not demonstrated a public benefit has been provided.

Response: KCC 21A.34.040.F contains the public benefits “eligible to earn density incentives through RDI review.” The applicant has selected to provide the “Energy Conservation” public benefit listed in this section. By selecting a listed benefit the project fulfills the obligation to provide a public benefit earning additional density and subdivision approval. The King County staff report which is attachment 1 of this report states that “compliance” with the energy conservation benefit will be achieved “at the time of the issuance of building permits for the construction of new residences on the two proposed lots.” County staff also required in the staff report that the recorded final short plat have a note stating the energy conservation requirements for future house construction. As a condition of approval of the City, the applicant of future building permits on the new lots will be required to demonstrate that the required energy conservation benefit is provided. The County also conditioned that the existing house must be demolished or remodeled to be compliant with the energy conservation requirements of KCC 21A.34.040.F prior to recording of the final short plat. The Land Use reviewer and Building reviewer will review the plans to ensure the required energy conservation is provided. **See conditions of approval in section VII of this report.**

C. Property value is reduced

Comment Summary: The proposed short plat will reduce our property value because it will change the existing character and aesthetic of the neighborhood.

Response: The King County code does not have design standards or decision criteria which requires the short plat and future houses to have any particular architecture or reflect the existing character of the neighborhood. There is no code requirement applicable to this short plat that discusses property value. The only standards the short plat is required to meet are the zoning and subdivision requirements. King County staff found the project meets the county codes and have recommended approval of the short plat to the City.

D. The proposal inappropriately intensifies density, traffic, noise, and burden on public services

Comment Summary: The existing neighborhood was not designed with the intention of having more than 1 house per lot.

Response: The project complies with the R-6 zoning regulations allowed by King County. The area has a land-use designation of UM, Urban Residential 4-12 dwelling units per acre. Additional dwelling units beyond those already platted were anticipated by King County for this area based on the intended urban densities. The utilities for the property are provided by the City of Bellevue. The utility reviewer has granted approval of the preliminary plat as our systems have capacity to handle the one additional house created by this short plat. The project is subject to King County transportation requirements which were reviewed by the City of Bellevue Transportation reviewer who approved the preliminary short plat with conditions.

E. Drainage off-site will be impacted by the new house

Comment Summary: The proposed short plat will cover more ground with impervious surface that will increase drainage onto adjacent property.

Response: The proposal was reviewed for compliance with the King County Surface Water Manual by King County's development review engineer. Any downstream drainage impacts are considered under the County's manual. The proposed short plat will be required to demonstrate compliance with KCC Title 9 prior to approval of the final short plat. Per the King County draft staff report, the project proposes to provide "Small Project infiltration/dispersion Best Management Practices" per the King County Surface Water Design Manual. The draft staff report also provided conditions for drainage and implementation of the required BMPs per the manual.

F. Solar Access

Comment Summary: The new houses resulting from this short plat will block sun light from reaching adjacent property.

Response: The allowed height for a residential structure is regulated by the King County zoning dimensional requirements for the R-6 zone in 21A.12.030. There are no decision criteria in the King County code that concern solar access to adjacent property. The proposed house will be required to meet the height limitations required by the King County zoning code. There is no code requirement that can be applied to this preliminary short plat approval to provide mitigation for lost solar access due to the construction of a second house.

G. Pumped Sewer, Tree Damage, and Fences

Comment Summary: The possibility of pumped sewage is concerning as the lot is uphill of my property and if the power fails it could back up into my house. The adjacent construction could damage trees on my property. The construction will remove the existing fence or require construction of a new one.

Response: The option to pump the sewer is available to the applicant if other connections are not available. The sewer connection for the proposed short plat is not connected to any adjacent existing houses. Any sewer back up will impact the

proposed homes of this short plat. If a property owner feels another owner has damaged their property, trees, fences or other improvements, the owner can pursue compensation through private litigation separate from this approval.

IV. Summary of City of Bellevue Review

A. Clearing and Grading:

The Clearing and Grading Division of the Development Services Department has reviewed the proposed subdivision. The Clearing and Grading staff found no issues with the proposed subdivision.

B. Utilities

The Utilities Department Development Review Division has reviewed King County's recommendations, conditions of approval, and the associated technical information relative to the project's compliance with King County's Codes and Standards. The City of Bellevue Utility staff approves the preliminary short plat and will review any future engineering plans per the applicable King County code requirements. The applicant will be required to apply to the City for permits to construct any infrastructure including utilities.

C. Transportation

The Transportation Department has reviewed the plans submitted for the preliminary short plat and recommends approval. The final engineering plans must show all transportation-related improvements and must be consistent with the Transportation Development Code (BCC 14.60) and the Transportation Department Design Manual prior to approval of the plat infrastructure permit. Prior to final short plat approval, the developer must provide all transportation improvements at the developer's expense (BCC 14.60.110) or provide an acceptable financial assurance device equivalent to 150% of the cost of unfinished improvements.

Under BCC 22.16, payment of the transportation impact fee for each new home prior to building permit issuance will adequately mitigate off-site transportation impacts. The fee amount is subject to periodic revision by the City Council. Builders will pay the fee in effect at the time of building permit issuance.

This short plat was originally approved by King County per the "Report & Decision Short Subdivision File No. L12S0003" document published on March 29th, 2012. The project site was annexed into the City of Bellevue on June 1st, 2012. All transportation related approval conditions required by King County have been transferred to the approval conditions documented in this report.

1. Site Access

Access to Lots A and B will be from a joint use driveway connecting to SE 44th Street as shown on the approved plans. The joint use driveway shall have a

paved width of 18 feet from the connection to SE 44th Street to the northern property of lot B and contained within a 20 foot ingress easement. The joint use driveway will connect to SE 44th Street via a driveway apron per DEV-7C (Driveway Approach Where Curb-Gutter Exists No Sidewalk).

Lot A will retain the address of 15018 SE 44th Street. Lot B has been given the address of 15010 SE 44th Street.

2. Street Frontage Improvements

In order to provide safe pedestrian and vehicular access in the vicinity of the site and to provide infrastructure improvements with a consistent and attractive appearance, the construction of street frontage improvements on SE 44th Street is required as a condition of development approval. The design of the improvements must conform to the requirements of the Americans with Disabilities Act, the Transportation Development Code (BCC 14.60), and the provisions of the Transportation Department Design Manual.

Bellevue City Code section 14.60.110A states that installation of street frontage improvements is required prior to final approval of short subdivisions. BCC section 14.60.110B states “Complete street frontage improvements shall be installed along the entire street frontage of the property at the sole cost of the permittee as directed by the Review Engineer. Street frontage improvements may include curb, gutter, sidewalk, storm drainage, street lighting, traffic signal equipment, utility installation or relocation, landscaping strip, street trees and landscaping irrigation, street widening, and channelization.”

Underlying these code sections are numerous policies and goals adopted by the City Council, including the Comprehensive Plan. Bellevue policy is to not allow new developments unless consistent with the goal to create a balanced transportation system having a wide range of travel choices and consistent with the vision of Bellevue as the “City in a Park.” This is carried out by placing conditions on the approval of development permits to assure that developers provide frontage improvements as appropriate to meet the City’s goals regarding alternative travel choices, appropriate traffic volumes, safety, aesthetics, and environmental enhancements. City policy leads to the creation of a higher quality community, thus benefiting developers, who can market developments in Bellevue for higher prices.

Under City policy, each site bears the cost of its own frontage improvements. These costs are passed on to the occupants through higher land prices. Each site receives benefits from all the other sites that have improved frontages. If a development is not required to bear the full cost of frontage improvements at the time of development, then those frontage improvements will not be completed unless paid for in the future by the City’s taxpayers. However, the

taxpayers already bear the cost of frontage improvements where they live and work, so the taxpayers would be double charged, while the new developer escapes these costs. Thus, it is equitable and roughly proportional for each new developer to bear the full cost of frontage improvements for each site.

The Jimmy Sy Short Plat must remove and replace all existing curb and gutter on SE 44th Street adjacent to the project site per TE-10 (Cement Traffic Curb and Gutter).

Relocation of an existing power pole at the connection of the joint use driveway to SE 44th Street is required to enhance safe ingress and egress movements.

Prior to final short plat approval, the developer must complete all transportation related improvements on SE 44th Street at the developer's expense (BCC 14.60.110) or provide an acceptable financial assurance device equivalent to 150% of the cost of unfinished frontage improvements.

3. Use of the Right of Way

Applicants often request use of the right of way and of pedestrian easements for materials storage, construction trailers, hauling routes, fencing, barricades, loading and unloading, and other temporary uses as well as for construction of utilities and street improvements. A Right of Way Use Permit for such activities must be acquired prior to issuance of any construction permit including demolition permit.

4. Pavement Restoration

The City of Bellevue has established the Trench Restoration Program to provide developers with guidance as to the extent of resurfacing required when a street has been damaged by trenching or other activities. Under the Trench Restoration Program, every public street in the City of Bellevue has been examined and placed in one of three categories based on the street's condition and the period of time since it was last resurfaced. These three categories are No Street Cuts Permitted, Overlay Required, and Standard Trench Restoration. Each category has different trench restoration requirements associated with it. Near the development site SE 44th Street is classified an Overlay Required street. Generally, for this classification pavement restoration consists of a full grind and overlay extending 50 feet in opposite directions from the center of the street cut for the full width of the street. Exact pavement restoration requirements will be specified in the right of way permit approval conditions to be issued with the building permit for this short plat.

5. Sight Distance

The access design shall meet the sight distance requirements of BCC 14.60.240. Vegetation shall be trimmed as needed within the sight triangle at

the discretion of the Transportation Inspector.

6. Transportation Impacts and Mitigation

City staff has analyzed the potential short term operational impacts of this proposal in order to recommend mitigation if necessary. These impacts included traffic operations conditions during the a.m. and p.m. peak hours. Due to the minimal amount of new trips generated by this short plat (one new p.m. peak hour trip and 10 new daily trips) and adequate capacity of SE 44th Street traffic impacts will be negligible.

V. State Environmental Policy Act (SEPA)

The proposed short subdivision is exempt per WAC 197-11-800 from review under the State Environmental Policy Act (SEPA), Chapter 43.21C RCW.

VI. Decision Criteria

The proposed two lot short plat is vested to the King County Code that was in place on March 29, 2012.

VII. Conclusion and Decision

After conducting the various administrative reviews associated with this proposal, including consistency with King County Code, Interlocal Annexation Agreement between King County and City of Bellevue, City Code and Standard compliance reviews, the Director of the Development Services Department does hereby **approve with conditions** the proposal to subdivide **KC Parcel # 2203500475** at 15018 SE 44th Street into two single-family parcels and a private access tract.

Note- Expiration of Approval: In accordance with King County Land Segregation Code Title 19A.12.040, the approved preliminary short plat is valid for a period of 84-months. If the final short plat is not filed before such time, the preliminary approval shall expire and be void.

VIII. Conditions of Approval

This approval adopts by reference all of the conditions of approval contained within the attached preliminary short plat recommendation prepared by King County.

In addition to those in the attached recommendation, the following conditions of approval are imposed under the Bellevue City Code referenced.

A. GENERAL CONDITIONS:

1. Energy Conservation Public Benefit

Per the condition of approval in the King County staff report, approval of the future building permit applications for the houses on each lot of this short plat will require demonstrating conformance with the energy conservation public benefit described in KCC 21A.34.040.F. The existing house on the lot is required to be converted to provide the energy conservation benefit or demolished prior to final short plat approval by the City.

AUTHORITY: Land Use Code 20.45B.130, KCC 21A.34.040
REVIEWER: Reilly Pittman, Land Use

2. Obtain Permits

Permits are required to construct or demolish infrastructure, utilities, buildings and other improvements. No construction may commence until the appropriate permit is issued.

AUTHORITY: Land Use Code 20.45B.130
REVIEWER: Reilly Pittman, Development Services Department

3. Noise Control

Noise related to construction is exempt from the provisions of BCC 9.18 between the hours of 7 am to 6 pm Monday through Friday and 9 am to 6 pm on Saturdays, except for Federal holidays and as further defined by the Bellevue City Code. Noise emanating from construction is prohibited on Sundays or legal holidays unless expanded hours of operation are specifically authorized in advance. Requests for construction hour extension must be done in advance with submittal of a construction noise expanded exempt hours permit.

AUTHORITY: Bellevue City Code 9.18
REVIEWER: Reilly Pittman, Land Use

B. CONDITIONS PRIOR TO ISSUANCE OF ANY DEVELOPMENT PERMIT

4. Right Of Way Use Permit

The applicant is required to apply for a Right of Way Use Permit before the issuance of any clearing and grading, building, foundation, or demolition permit. In some cases, more than one Right of Way Use Permit may be required, such as one for hauling and one for construction work within the right of way. A Right of Way Use Permit regulates activity within the city right of way, including but not limited to the following:

- a) Designated truck hauling routes.
- b) Truck loading and unloading activities.
- c) Hours of construction and hauling.

- d) Continuity of pedestrian facilities.
- e) Temporary traffic control and pedestrian detour routing for construction activities.
- f) Street sweeping and maintenance during excavation and construction.
- g) Location of construction fences.
- h) Parking for construction workers.
- i) Construction vehicles, equipment, and materials in the right of way.
- j) All other construction activities as they affect the public street system.
- k) Pavement restoration requirements.

In addition, the applicant shall submit for review and approval a plan for providing pedestrian access during construction of this project. Access shall be provided at all times during the construction process, except when specific construction activities such as shoring, foundation work, and construction of frontage improvements prevents access. General materials storage and contractor convenience are not reasons for preventing access.

AUTHORITY: Bellevue City Code 14.30
REVIEWER: Tim Stever, Transportation Department

5. Off-Street Parking

The applicant must secure sufficient off-street parking for construction workers, equipment, and materials storage before the issuance of a clearing and grading, building, foundation, or demolition permit.

AUTHORITY: Bellevue City Code 14.30
REVIEWER: Tim Stever, Transportation Department

6. Engineering Plans

The King Country approval conditions per "Report & Decision Short Subdivision File No. L12S0003A" cites that applicant is not required to submit construction plans. Therefore, all transportation related improvements will be required to be shown on the Building Permit Plans to be issued for lot B. This plan must be produced by a qualified engineer and approved by the City prior to issuance of the Building Permit. The design of all street frontage improvements must be in conformance with the requirements of the Americans with Disabilities Act, the Transportation Development Code, and the provisions of the Transportation Department Design Manual. The engineering plans must correctly show all transportation-related engineering details, including but not limited to, the design of the joint use driveway, the connection to SE 44th Street via DEV-7C, full grind and overlay pavement restoration in SE 44th Street, mailbox location, and sight distance. Appropriate standard drawings from the Transportation Department Design Manual must be included in the engineering plans.

Specific requirements are detailed below:

a) Site Specific Items:

- i) Remove and replace curb and gutter along SE 44th Street adjacent to the project site.
- ii) Install a driveway apron per DEV-7C at the connection of the joint use driveway to SE 44th Street.
- iii) Relocate the existing power pole to create a 10 foot clear distance from the nearest edge of the joint use driveway.

b) Miscellaneous:

- Landings on sloping approaches are not to exceed a 10% slope for a distance of 20 feet approaching the back edge of asphalt of SE 44th Street. Driveway grades must be designed to prevent vehicles from bottoming out due to abrupt changes in grade. Maximum grade for all access routes is limited to 15%.
- Vehicle and pedestrian sight distance must be provided per BCC 14.60.240 and 14.60.241.

AUTHORITY: Bellevue City Code 14.60; Transportation Department Design Manual

REVIEWER: Ray Godinez, Transportation Department

7. Sight Distance

If necessary to meet the sight distance requirements of BCC 14.60.240 and standard drawing TE-1, existing vegetation near the access point on SE 44th Street must be trimmed. Ground vegetation within the sight triangle must be trimmed to no more than 2.5 feet above a line drawn from pavement level to pavement level. Trees within the sight triangle must be limbed up to a height of 7.5 feet above a line drawn from pavement level to pavement level. A description of any required vegetation trimming must be shown on a sheet of the clearing and grading plan set.

AUTHORITY: Bellevue City Code 14.60.240

REVIEWER: Ray Godinez, Transportation Department

8. Pavement Restoration

The city's pavement manager has determined that the portion of SE 44th Street adjacent to the project site will require a full grind and overlay trench restoration for any utility connections or other digging in the street surface. Trench restoration must meet the requirements of Section 21 of the Design Manual and standard drawings ROW-1 through ROW-5. Exact pavement restoration limits must be shown on the building permit for lot B of the Jimmy Sy Short Plat.

AUTHORITY: Bellevue City Code 14.60.250 and Design Manual Design Standard # 21

REVIEWER: Tim Stever, Transportation Department

C. PRIOR TO APPROVAL OF FINAL SHORT PLAT:

9. Infrastructure Improvements

All street frontage and infrastructure improvements shown in the final engineering plans or required by city codes and standards must be either completed prior to approval of the final short plat or provided for with a financial assurance device. Completion of the top lift and all other transportation infrastructure items prior to completion of the homes associated with the development is allowed.

Land Use Code Section 20.40.490 allows a developer to obtain final short plat approval prior to finishing improvements with provision of an acceptable financial assurance device equivalent to 150% of the cost of unfinished infrastructure improvements. Provision of such an assurance device requires completion of the improvements by the developer within two years of final short plat approval. Installation of improvements that would negatively affect safety if left unfinished may not be delayed through use of a financial assurance device. Partial reductions of the financial assurance device will not be approved except in special circumstances, determined in advance, such as phased projects.

Improvements must be approved by the Transportation Department inspector before they are deemed complete. At completion of all transportation infrastructure items, the developer must provide a one year maintenance assurance device equivalent to 20% of the value of the transportation infrastructure improvements, dating from the acceptance of the improvements.

AUTHORITY: Bellevue City Code 14.60.100, 110, 130, 150, 170, 190, 210, 240, 241; LUC 20.40.490; Transportation Department Design Manual Sections 3, 4, 5, 7, 11, 14, 19

REVIEWER: Ray Godinez, Transportation Department

10. Access Design And Maintenance

The final Subdivision map must include a note that specifies that the owners of lots served by the joint use driveway are jointly responsible for maintenance and repair of the joint use driveway). Also, the final Subdivision map must include a note that specifies that the joint use driveway will remain open at all times for emergency and public service vehicles and shall not be gated or obstructed.

AUTHORITY: BCC 14.60.130

REVIEWER: Ray Godinez, Transportation Department

Attachment 1: King County Short Plat Staff Report Recommendation

DRAFT

**REPORT AND DECISION
SHORT SUBDIVISION FILE NO. L12S0003**

A. DESCRIPTION OF THE PROPOSED SHORT SUBDIVISION:

This is a proposal to subdivide approximately 0.2461 acres (10,718 square feet) into two lots for detached single-family dwellings in the R-6 zone. The proposed lot sizes are 5,053 and 5,250 square feet, and the proposed density is approximately 8.13 dwelling units per acre. Refer to Attachment 1 of this report for a copy of the proposed short plat map.

The applicant is also requesting approval to add density to the proposed short plat under the Residential Density Incentives found in King County Code (KCC) 21A.34. This request for additional density is based on KCC 21A.34.040F4a and 21A.34.040F4b, which allow density to be added to a subdivision if conservation features are included in the construction of the residences on the site, for the reduction of energy use from heating.

It should be noted that the above-described application was filed with King County on March 29, 2012, and at that time, the property was located in unincorporated King County. Subsequently, on June 1, 2012, the property was annexed into the City of Bellevue. Under state law, since the application vested prior to June 1, 2012, it is subject to King County regulations, rather than City regulations. However, since the property now lies within the City, the City is the decision-maker on this application, not King County.

B. GENERAL INFORMATION:

Owner/Applicant: Jimmy Sy
15328 SE 82nd Street
Newcastle, WA 98059

Engineer: Encompass Engineering & Surveying
165 NE Juniper Street, Suite 201
Issaquah, WA 98027

STR: Northwest ¼ of Sec. 14, Twp. 24, Range 5

Location: Lying on the north side of SE 44th Street at 15018 SE 44th St.
Bellevue, WA

Zoning: R-6
Acreage: 0.2461 acres (10,718 square feet)
Number of Lots: 2 lots
Density: 8.13 dwelling units per acre
Lot Size: 5,053 and 5,250 square feet
Proposed Use: detached single-family residences

Sewage Disposal: City of Bellevue
Water Supply: City of Bellevue
Fire District: King County Fire Protection District #14
School District: Bellevue School District #405
Complete Application (Vesting) Date: March 29, 2012

C. NATURAL ENVIRONMENT

1. Topography: The subject property contains gently sloping terrain, declining in elevation to the north.

2. Soils: Arents, Alderwood material (AmC) is found on this site, per the 1973 King County Soil Survey. This soil unit is located on 6-15% slopes. It consists of well drained and moderately well drained gravelly sandy loams and gravelly loams of the Alderwood, Beausite, and Oval series and of the Arents, Alderwood material. Permeability is moderate to moderately rapid. Alderwood soils are very slowly permeable in the substratum. Runoff is slow to medium, and the hazard of erosion is slight to moderate. In winter, water moves along the top of the substratum of Alderwood soils and Arents, Alderwood material.
3. Wetland/Streams: No hydrologic features were observed on this site at the time of the King County staff field investigation. The site lies within the West Lake Sammamish drainage basin.
4. Vegetation: The subject property contains residential landscaping, a grass lawn, and a few trees. An evergreen tree and a deciduous tree are situated along the southern property line at SE 44th St., and a couple of deciduous trees are located on the northwest portion of the site.
5. Wildlife: It is likely that small birds and animals visit this site on occasion. No threatened or endangered species are known to exist on or near the property.
6. Mapped Critical Areas: King County's Geographic Information System (GIS) does not show any mapped Critical Areas on the site.

D. DESIGN FEATURES, UTILITIES AND SERVICES

1. Existing On-Site Improvements and Neighborhood Characteristics:
 - a. Subject Property: The site for the proposed short plat is located on a previously platted lot in a developed, single-family residential neighborhood. This lot (Lot 22, Block 6 of Eastgate Addition Division No. D) is currently developed with a detached single-family residence on the southern half of the property. Three small "sheds" and a "garage" are also located on the property, north of the residence. The applicant is proposing to retain one of the sheds, located along the west property line, and remove the other outbuildings.

With regard to retention of the existing residence, per the applicant's site plan, the existing house is situated a minimum of ten feet, but less than 15 feet, from the east property line of the site. For access to the proposed, rear (northern) lot of the short plat, the King County Department of Development and Environmental Services (DDES) requires a minimum of 15 feet between the existing residence and the east property line. Fifteen feet will provide sufficient room for a 10-foot-wide driveway easement, and a 5-foot building setback between the easement and the residence. Since sufficient room currently exists on the site for a 10-foot easement, but not a 5-foot building setback from the easement, the applicant has included the following notation on the proposed site plan: "House To Be Removed Or Modified For Setback."
 - b. Neighborhood Characteristics: As noted above, the subject property lies within an existing, developed, single-family residential neighborhood. With the exception of two lots directly south of the subject property across SE 44th Street, the lots in the neighborhood are similar in size to the subject property, and are developed with residences of a similar age. Directly south across SE 44th St., a short plat was recorded in 2008 (File No. L06S0004) which is very similar to the proposed short plat application. Short Plat L06S0004 created two lots which are 5,321 and 5,380 square feet. New, modern, single-family residences were subsequently constructed on these lots.

2. Comprehensive Plan, Zoning, Density and Lot Width: The King County Comprehensive Plan land-use designation for the site is “um” (Urban Residential 4 – 12 du/ac). The zoning of the site is R-6, and under the County’s Base Density provisions, six dwelling units per acre are allowed in the R-6 zone (KCC 21A.12.030A).

The King County Zoning Code allows the Base Density provisions to be exceeded in the County’s urban zone classifications, including in the R-6 zone, to achieve what the code identifies as Maximum Density. Maximum Density can be achieved either through compliance with the Residential Density Incentives (RDI) of KCC 21A.34, or the Transfer Development Rights (TDR) provisions of KCC 21A.37, or both. As noted above, the applicant is proposing to increase the density of the proposed short plat above the permitted Base Density of the R-6 zone, through compliance with the RDI regulations.

The King County Code allows a Maximum Density in the R-6 zone of 1.5 times the Base Density of the zone; i.e., 9 dwelling units per acre. If all residences on the site are restricted to use by moderate income individuals, the permitted Maximum Density in the R-6 zone is 2 times the Base Density, or 12 dwelling units per acre. The applicant’s proposed density for the subject short plat is 8.13 dwelling units per acre.

The subject property is 0.2461 acres in size. Without compliance with the RDI provisions, the site is not large enough to permit a two-lot subdivision under R-6 zoning (0.2461 ac. x 6 dwelling units per acre = 1.4766 dwelling units). Per KCC 21A.12.070D, dwelling unit counts of 1.5 or larger are rounded up, and below 1.5 are rounded down.

The applicant is proposing to receive approval for additional density for the site, by complying with either KCC 21A.34.040F4a or 21A.34.040F4b. These code sections read as follows:

4. ENERGY CONSERVATION

a. Benefit units that incorporate conservation features in the construction of all on-site dwelling units heated by electricity that save at least 20 percent of space heat energy use from the maximum permitted by the Northwest Energy Code, as amended. No more than 50 percent of the required savings may result from the installation of heat pumps. None of the required savings shall be achieved by reduction of glazing area below 15 percent of floor area. Energy use shall be expressed as allowable energy load per square foot or as total transmittance (UA).

0.15 bonus unit per benefit unit that achieves the required savings.

b. Benefit units that incorporate conservation features in the construction of all on-site dwelling units heated by natural gas, or other nonelectric heat source, that save at least 25 percent of space heat energy use from the maximum permitted by the Northwest Energy Code, as amended. None of the required savings shall be achieved by reduction of glazing area below 15 percent of floor area. Energy use shall be expressed as allowable energy load per square foot or as total transmittance (UA). (emphasis added)

0.10 bonus unit per benefit unit that achieves the required savings.

Compliance with the above RDI provisions can be achieved at the time of the issuance of building permits for the construction of *new* residences on the two proposed lots. With regard to the existing residence on Lot A, it must either be re-modeled prior to final short plat approval to comply with KCC 21A.34.040F4a or F4b, or it must be removed from the site prior to final short plat approval.

Regarding lot width, the two proposed lots of the subject application meet the 30-foot lot width requirement of the King County Zoning Code (KCC 21A.12.030).

3. **Access/Roadway Section:** The proposed short plat is located on SE 44th Street, about 200 feet east of 150th Avenue SE. SE 44th Street is an urban subcollector street with a 32-foot-wide roadway and vertical curbs on both sides of the street. The existing house on the subject property accesses SE 44th St. via a paved driveway, along the eastern margin of the property. This driveway continues north past the house to a parking area that is paved in part, and partially gravel.

To serve the two lots of the proposed short plat, the applicant has proposed a joint-use driveway tract (JUD) at the southeast corner of Lot A, adjacent to SE 44th St. Available stopping site distance from the JUD on SE 44th St. will comply with the standards of the King County Road Design and Construction Standards.

No sidewalks exist on the streets in the vicinity of the proposed short plat; however, vertical curbing is present, though broken in places.

The existing garage on the site straddles the lot line proposed between Lots A and B of the short plat, and as a result, the garage will need to be removed prior to the recording of the short plat.

The applicant's proposal is to use the JUD to access a new parking area for the existing house. This new parking area will be situated between the house and SE 44th St. A driveway serving only Lot B, the northerly proposed lot, will extend from the JUD across Lot A to Lot B.

4. **Drainage:** The subject short plat application is located in the Mercer Slough sub-basin, and drains into the I-90 drainage system. The site declines to the north at a five to ten percent slope to the back yards of the adjoining homes. Existing storm water runoff across the site appears to sheet flow or infiltrate into the soil, since no defined channels or evidence of concentrated flow were observed on the property. The existing street drainage system adjacent to the south boundary of the property prevents runoff from entering the site, and conveys it to the west.

The applicant's drainage proposal for the proposed short plat application is to provide Small Project infiltration/dispersion Best Management Practices, as identified in the King County Surface Water Design Manual.

5. **Schools:** This proposal has been reviewed under RCW 58.17.110 and King County Code 21A.28 (School Adequacy).
 - a. **School Facilities:** The lots of the proposed short plat will be served by Eastgate Elementary, Tillicum Middle School and Newport High School, all located within Bellevue School District No. 405.
 - b. **School Impact Fees:** The Bellevue School District currently does not have an adopted, development impact fee for funding school system improvements.
 - c. **School Adequacy:** The Bellevue School District has not submitted a capital facilities plan to King County for review and approval by the King County Council. Thus, it is difficult to evaluate the sufficiency of school facilities in the District to serve new development. However, per KCC

21A.28.140, short subdivision applications are exempt from review under King County's adopted school concurrency standard.

- d. School Access: Per comments received from the Bellevue School District, children from the proposed short plat will walk to Eastgate Elementary, and will take Metro buses to Tillicum Middle School and Newport High School. The District indicated that students can board the Metro buses at Eastgate Elementary.

Eastgate Elementary lies about 1/8 of a mile northeast of the subject property, and can be reached via SE 44th St. and 151st Ave SE. It appears that there is sufficient room on these streets for school children to walk outside the vertical curbing, along the frontage of the lots adjoining these streets.

6. Utilities:

- a. Sewage Disposal: The applicant has proposed to serve the proposed short plat with a public sewer system managed by the City of Bellevue. The City has completed a Certificate of Sewer Availability, dated January 13, 2012, which indicates the City has the ability to serve the short plat.
- b. Water Supply: The applicant has proposed to serve the proposed short plat with a public water system managed by the City of Bellevue. The City has completed a Certificate of Water Availability, dated January 13, 2012, which indicates the City has the ability to serve the short plat.

- 7. Fire Protection: Based on the Certificate of Water Availability completed by the City of Bellevue, sufficient water is available to the site to meet the King County fire flow requirements. Building permits for future residences constructed on the proposed lots will be reviewed by the City. The City may require the installation of fire protection sprinkler systems in these residences.

- 8. Recreation: KCC 21A.14 requires short subdivisions of five or more lots in the Urban designated area to provide on-site recreation space. Since the proposed short plat is for two lots, it is exempt from this code requirement.

A public park is located approximately 350 feet west of the site, however, travel to this park via public streets is about ½ mile from the property.

E. SEPA THRESHOLD DETERMINATION:

This short subdivision application is exempt from review under the State Environmental Policy Act (SEPA), RCW 43.21C.

F. FINDINGS/CONCLUSIONS:

The subject application will comply with the goals and objectives of the King County Comprehensive Plan, the requirements of the King County Subdivision and Zoning Codes, and other official land use controls of King County (i.e. the 2007 Road Design and Construction Standards, the Surface Water Design Manual, etc.), based upon the following conditions for final short plat approval.

G. DECISION:

Short Plat File No. L12S0003, received March 29, 2012 and depicted on Attachment 1 to this report, is GRANTED PRELIMINARY APPROVAL; subject to the following conditions of final approval:

- 1. **KCC Title 19A – Compliance with Final Short Subdivision Requirements**

- A. Compliance with all of the Land Segregation provisions of King County Code Title 19A.
- B. The final short subdivision recording documents must be prepared by a professional land surveyor, licensed in the State of Washington. These documents shall comply with the conditions of approval listed in this report/decision.
- C. The final review process must be completed prior to the recording of the short subdivision or the sale of any lots contained within. It is strongly recommended that the Final Short Plat review package be submitted to the City of Bellevue at least one year prior to the expiration date of the preliminary approval decision.
- D. All persons having an ownership interest in the subject property shall sign on the face of the final short subdivision.
- E. All utilities within proposed rights-of-way must be included within a franchise approved by the City of Bellevue, prior to final short plat recording.
- F. Prior to recording, KCC 19A.08.160 requires that the following site work be completed:
 - 1. Drainage best management practices (BMP's) facilities and erosion control measures are consistent with K.C.C. 9.04.090;
 - 2. Water mains and hydrants are installed (if required), and fire flow is available;
 - 3. Grading as necessary so that all lots are accessible by passenger vehicle;
 - 4. Specific site improvements are completed that are required prior to recording, or are required to remove any safety hazard.

2. **Access Requirements – KCC Title 14, 2007 King County Road Design and Construction Standards (KCRDCS)**

Minimal roadway improvements are required to address access requirements and impacts to existing roads and right-of-way. Engineering plans are not required to address these improvements. Any construction or upgrading of public and private roads shall comply with the 2007 KCRDCS, established and adopted by Ordinance No. 15753 as amended. The proposed short subdivision shall comply with the KCRDCS including the following requirements, unless otherwise approved by the City of Bellevue:

- a. The existing curbing along the frontage of the site shall be repaired and restored, related to the construction of the joint use driveway (KCRDCS Section 2.03B).
- b. Tract A shall be improved as a private joint use driveway (JUD), serving Lots A and B. These lots shall have undivided ownership of the tract and be responsible for its maintenance. As specified in KCRDCS 3.01C, the driving surface of the JUD shall be paved 18-foot in width (tract width 20 feet), and extend from the SE 44th St. right-of-way to the northern boundary of Tract A. Please look under DDES application packets at www.Kingcounty.gov/ddes/forms for detailed information on driveway connections.
- c. Power poles located along the subject property road frontage fall within the minimum area required for driveway construction. The poles

are required to be relocated prior to recording (KCRDCS Section 5.10). Field verification that this condition has been satisfied prior to final plat approval is required..

Modifications to the above road improvement conditions may be considered by the City of Bellevue, pursuant to the variance procedures in KCRDCS 1.12. Any request for a road variance shall be submitted to King County DDES on the appropriate form and with the minimum fee deposit.

With the exception of those items noted above, site design details may be shown on the preliminary site plan that may not have been reviewed for compliance with KCRDCS. If differences exist between the site plan and the requirements of the KCRDCS, the final design shall be modified to meet KCRDCS.

3. Surface Water Management Control – KCC Title 9, 2005 King County Surface Water Design Manual (SWDM)

The extent of the improvements proposed or required for this short plat qualify for Small Project Drainage Review, as outlined in SWDM Section 1.1.2.1. Best Management Practices (BMP's) are required for new impervious surfaces (frontage improvements, driveways and new houses) created with this project. An analysis and proposal showing how Small Project Drainage Review requirements will be met shall be included with the final platting submittal package (Title 19A). Drainage facilities associated with future lot improvements may be submitted and reviewed separately at the building permit stage.

To implement the required BMP's for the treatment of storm water, the final plans and a technical information report (TIR) shall clearly demonstrate compliance with all applicable design standards. As described in Chapter 5 of the King County SWDM, a subdivision project may implement the required BMP's, or defer the lot BMP requirements until the future review of building permits. In either case, the final plans for the short plat shall clearly indicate on the recorded short plat the applicable BMP standards and requirements for implementation.

If the subdivision applicant chooses to defer implementation of lot BMP's to the building permit process, the following note shall be shown on the final recorded plat:

“Permit applications for buildings or other improvements constructed on lots created by this subdivision must be reviewed for compliance with Best Management Practices (BMP's) and other applicable drainage standards specified in the King County SWDM, and applicable City regulations. As determined by the City of Bellevue, the permit applicant for each lot must prepare a drainage site plan with procedures for design and maintenance details, and record a declaration of covenant and grant of easement for implementation of the BMPs.”

Consistent with the authority and procedures outlined in Chapter 1.4 of the King County SWDM, drainage adjustments to any of the above requirements may be considered by the City of Bellevue. Adjustment applications shall be submitted to King County DDES on the appropriate form and with the minimum fee deposit.

4. Site Improvement Inspections, Fees and Financial Guarantees (KCC Title 19 & 27)

An inspection fee and applicable financial guarantees are required prior to either starting construction or recording this short plat. Please contact the

City of Bellevue to request the initiation of the fee estimate and financial guarantee paperwork process and to request a pre-construction meeting.

5. Health/Utilities (KCC 13)

This project is exempt from King County Health Department review. However, if sewer and/or water improvements are required by the City of Bellevue to serve this proposed short plat, then the applicant shall provide documentation to verify the improvements have been bonded or installed, prior to recording of the short plat.

6. Building and Construction Standards (Title 16)

The applicant shall comply with all applicable provisions of KCC Chapter 16.82, including KCC 16.82.156 concerning the preservation of "significant trees" on short subdivisions located in the King County "Urban" designated area. A detailed tree retention plan, which complies with KCC 16.82.156B2 and other applicable requirements of this code section, shall be submitted for review and approval prior to final short plat approval. Bonding may be required by the City of Bellevue to assure implementation of the tree retention/replacement plan. No clearing or grading of the site shall occur until the City of Bellevue approves the detailed tree retention plan.

7. Zoning Code (KCC 21A)

A. Density and Dimensions (KCC 21A.12)

- i. All lots shall meet the dimensional requirements of the R-6 zone classification or shall be as shown on the face of the approved preliminary short subdivision, whichever is larger. Minor revisions to the short subdivision, which do not result in substantial changes and do not create additional lots may be approved by the City of Bellevue.
- ii. The subject short plat application shall comply with the density requirements of the R-6 zone classification (KCC 21A.12) and the Residential Density Incentives (KCC 21A.34). The applicant has proposed to comply with KCC 21A.34.040F4a or b to allow the creation of the two proposed lots. (These code sections are quoted in Section D above.) In this regard, the following requirements shall be met:
 - a. Prior to recording of the subject short plat, the existing residence on Lot A shall be removed from the site, or this residence shall be remodeled so that it complies with either KCC 21A.34.040F4a or 21A.34.040F4b. Building and/or demolition permits, if required, shall be secured from the City of Bellevue.
 - b. The following verbiage shall appear on the recorded short plat:

All residential dwelling units constructed on the lots of this short plat shall comply with the following energy conservation standards (King County Code 21A.34.040F4a and 21A.34.040F4b):

All on-site dwelling units heated by electricity shall be designed to save at least 20 percent of space heat energy use from the maximum permitted by the Northwest Energy Code, as amended. No more than 50 percent of the

required savings may result from the installation of heat pumps. None of the required savings shall be achieved by the reduction of glazing area below 15 percent of floor area. Energy use shall be expressed as allowable energy load per square foot or as total transmittance (UA).

All on-site dwelling units heated by natural gas, or other nonelectric heat source, shall be designed to save at least 25 percent of space heat energy use from the maximum permitted by the Northwest Energy Code, as amended. None of the required savings shall be achieved by the reduction of glazing area below 15 percent of floor area. Energy use shall be expressed as allowable energy load per square foot or as total transmittance (UA).

B. Setbacks and Accessory Buildings (KCC 21A.06.020, KCC 21A.12.030, KCRDCS 3.01)

- i. To provide sufficient room for both a 10-foot-wide access easement from Tract A to Lot B and a 5-foot building setback from this access easement to the existing residence on Lot A, this residence shall either be removed from the site, or modified to provide at least 15 feet between the residence and the east property line of the subject property. Documentation shall be submitted from a licensed land surveyor to show this requirement has been met. Building permits shall be secured from the City of Bellevue, as needed.
- ii. With one exception, prior to recording the proposed short plat, all outbuildings shall be removed from the site. The existing "shed" lying immediately northwest of the Lot A residence may be retained on the site, if this residence is also retained (see Conditions 6Aii and 6Bi above).

C. Required Off-Street Parking (KCC 21A.18.120)

If the existing residence is retained on Lot A, an asphalt paved parking area to accommodate two off-street parking spaces shall be constructed south of the residence, and outside of the required 10-foot street setback. The two spaces can be placed in tandem; thus, they will measure 8.5 feet wide x 36 feet long.

D. Street Trees (KCC 21A.16) – Street trees shall be provided as follows (per KCRDCS 5.03 and KCC 21A.16.050):

- i. Trees shall be planted at a rate of one tree for every 40 feet of frontage along SE 44th St. along the frontage of the site. The requirement for these trees may be waived or the 40-foot spacing modified to accommodate sight distance requirements for driveways and intersections.
- ii. Trees shall be located within the street right-of-way and planted in accordance with Sec. 5.03 and Drawings 5-009 through 5-013 of the 2007 King County Road Design and Construction Standards (KCRDCS), unless the City of Bellevue determines that trees should not be located in the street right-of-way.
- iii. If the City determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20-feet from the street right-of-way line.

- iv. The trees shall be owned and maintained by the Lot A property owner unless the City has adopted a maintenance program. Ownership and maintenance shall be noted on the face of the final recorded plat.
- v. The species of trees shall be approved by the City if located within the right-of-way, and shall comply with KCRDCS 5.03L, M, and N. They shall not include species the City determines has the potential to disrupt utilities or impact roadway improvements. All tree planting in the right-of-way shall include the installation of an approved root barrier adjacent to walks and curbs for each tree, unless otherwise approved by the City.
- vi. The applicant shall submit a street tree plan and bond quantity worksheet for review and approval by the City.
- vii. The street trees must be installed and inspected, or a performance bond posted prior to recording of the plat. If a performance bond is posted, the street trees must be installed and inspected within one-year of recording of the plat. At the time of inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted and held for one-year. After one-year, the maintenance bond may be released after the City has completed a second inspection and determined that the trees have been kept healthy and thriving.

8. Road Mitigation Payment System (KCC 14.75)

The applicant or subsequent owner shall comply with the Road Mitigation Payment System (MPS), King County Code 14.75, by paying the required MPS fee and administration fee. The applicant or subsequent owner has an option to either:

- A. Pay the MPS fee at final short plat recording, or
- B. Pay the MPS fee at the time of building permit issuance.

If the first option is chosen, the fee paid shall be the fee in effect at the time of short plat application and a note shall be placed on the face of the recorded short plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS) have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of the building permit application.

Other Considerations

- A. Preliminary approval of this application does not limit the applicant's responsibility to obtain any required permit or license from the State or other regulatory body. This may include, but not be limited to, obtaining a forest practice permit, an HPA permit, building permits, and other types of entitlements as necessitated by circumstances.
- B. Development of the subject property may require registration with the Washington State Department of Licensing, Real Estate Division.

Parties and Persons of Interest:

Jimmy Sy, Owner/Applicant, 15328 SE 82nd St. Newcastle, WA 98059
 Randall Corman, 2216 Harrington Place NE Renton, WA 98056
 D. DeMarco, 15054 SE 44th St. Bellevue, WA 98006

Lynn Logen, 15017 SE 43rd Place Bellevue, WA 98006

Lori Reiter 15049 SE 44th St Bellevue, WA 98006

J. Richard Aramburu, Aramburu & Eustis, 720 3rd Ave, Ste. 2112, Seattle, WA 98104

Lanny Henoeh, PPM III, King County DDES, 900 Oakesdale Ave SW Renton, WA 98057

Pat Simmons, Engineer, King County DDES, 900 Oakesdale Ave SW Renton, WA 98057

Joanne Carlson, AS II, King County DDES, 900 Oakesdale Ave SW Renton, WA 98057

Molly Johnson, Supervising Development Engr, King County DDES, 900 Oakesdale Ave
SW Renton, WA 98057

Jarrold Lewis, Supervisor, PCS Section, King County DDES, 900 Oakesdale Ave SW
Renton, WA 98057

Appeal Information

RIGHT TO APPEAL

(The City of Bellevue appeal procedures and fees should appear here.)



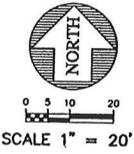
SHORT PLAT NO. _____
KING COUNTY, WASHINGTON

King County

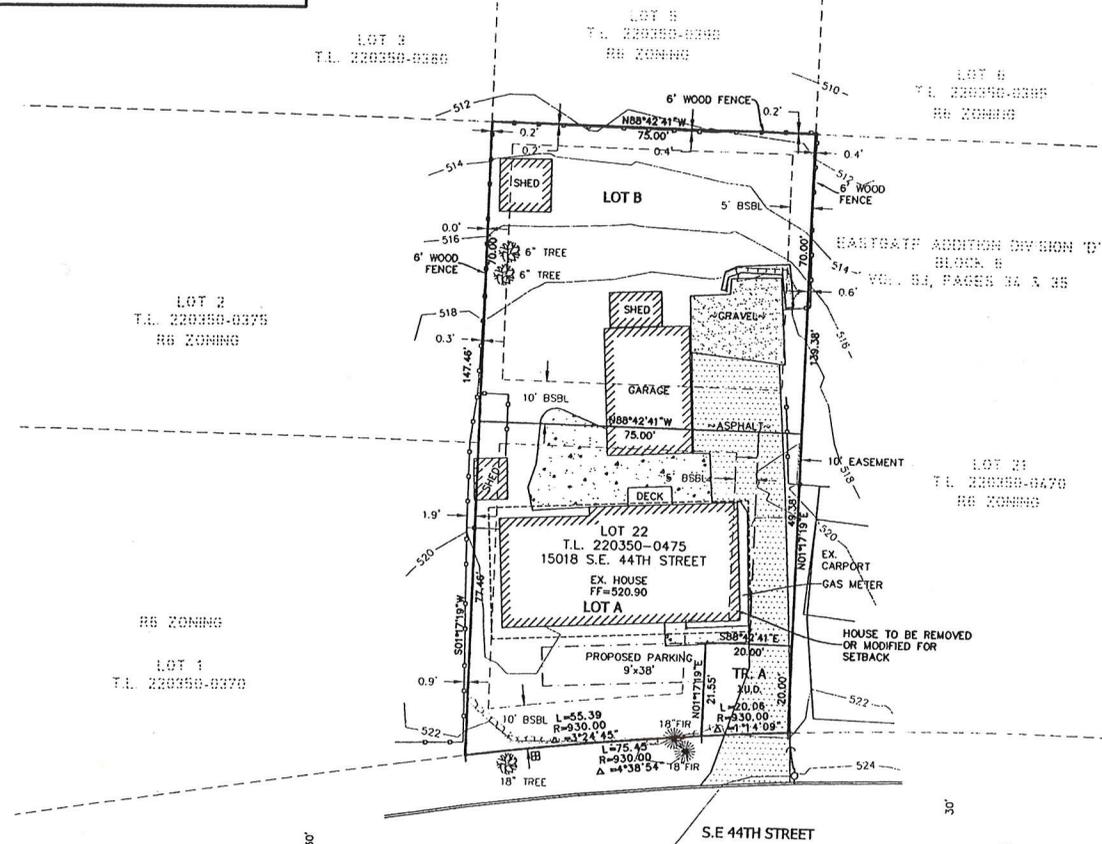
RECORDING NO. _____ VOL./PAGE _____

SCALE: _____

PORTION OF
SW 1/4 of NW 1/4, S. 14, T. 24 N., R. 5 E., W.M.



RECEIVED
MAR 29 2012
K.C. D.D.E.S.



ATTACHMENT 1
PAGE 1 OF 1 PAGE

MAIN FILE COPY

JIMMY SY
SHORT PLAT 2

Encompass
ENGINEERING & SURVEYING

165 NE Juniper Street, Suite 201 • Issaquah, WA 98027
• Phone: (425) 392-70250 • Fax: (425) 391-3055

DWN. BY JEF	DATE 01/25/12	JOB NO. 11536
REV	SCALE 1"=20'	DWG NO. 11536-SP
CHKD. BY WSH		SHEET 2 OF 2

**Attachment 2: King County Hearing Examiner Decision for G-Box
Short Plat**

July 21, 2006

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

400 Yesler Way, Room 404
Seattle, Washington 98104
Telephone (206) 296-4660
Facsimile (206) 296-1654

ORDER DISMISSING APPEAL

SUBJECT: Department of Development and Environmental Services File No. **L05S0046**

G-BOX LLC SHORT PLAT

Short Plat Appeal

Location: 15017 Southeast 43rd Street, Bellevue

Applicant: G-Box LLC
represented by **Jerry Walker**, Attorney
AS Donaldson, PLLC
110 – 110th Avenue Northeast, Suite 370
Bellevue, Washington 98004-5857
Telephone: (425) 688-7871
Facsimile: (425) 688-7787

Appellants: Nancy and Dean Uttech,
George and Patricia Henderson,
Neighborhood Protection Association
represented by **Jane Ryan Koler**, Attorney
P.O. Box 2509
Gig Harbor, Washington 98335
Telephone: (253) 853-1806
Facsimile: (253) 851-6225

King County: Department of Development and Environmental Services,
represented by **Barbara Heavey**
900 Oakesdale Avenue Southwest
Renton, Washington 98055
Telephone: (206) 296-7222
Facsimile: (206) 296-7051

1. At the pre-hearing conference held for the above-referenced short plat appeal on June 20, 2006, the King County DDES staff representative made an oral motion to dismiss the appeal on the grounds that King County lacks the authority to enforce within a short plat review the terms of a private covenant against re-division of a platted lot. Since the short plat appeal is based exclusively on a claim that the short plat application should be denied based on its inconsistency

with covenants imposed at the time of the creation of the underlying plat, an affirmative ruling on the DDES motion would be dispositive of all of the short plat appeal issues.

2. The G-Box, LLC Short Plat approved by DDES on April 14, 2006 seeks to re-divide an 11,663 square foot lot within Eastgate Addition Division D into two nearly equal lots of approximately 5,830 square feet each. The property is currently zoned R-6, which would permit the re-division to occur. The final plat for Eastgate Addition Division D contains on its face the following note under the heading “Restrictions”:

No lot or portion of a lot in this plat shall be divided and sold or resold or ownership changed or transferred whereby the ownership of any portion of this plat shall be less than the area shown on the face of this plat. All lots in this plat are restricted to R-1 Resident District use governed by and subject to restrictions, rules and regulations of the King County Zoning Resolution No. 11373 and subsequent changes thereto by official county resolution.

3. In 1954, contemporaneously with the filing of the final plat, a separate set of covenants were also recorded for Eastgate Addition Division D that contained the following language:

“No residential structure shall be erected or placed on any building plot, which plot has an area of less than 8,000 square feet or width of less than 60 feet at the front building setback line.”

4. For purposes of this summary judgment motion we shall assume as asserted by the Appellants that the recently conferred G-Box, LLC Short Plat approval violates the terms of both the plat note and the restrictive covenant quoted above. The question presented is whether DDES in reviewing the G-Box Short Plat application was required to give effect to either the plat note or the covenant, or to both. The authority exercised by DDES in reviewing a short plat application is conferred by state law under RCW Chapter 58.17 and by county code pursuant to the provisions of KCC Chapter 19A. KCC 19A.08.060 provides that applications for short subdivisions may be approved or denied in accordance with a specified list of adopted county and state rules, regulations, plans and policies. In addition to the state subdivision statute and SEPA regulations, the list of enactments specified by KCC 19A.08.060 that provide review authority include the KCC Title 21A zoning code, the Title 23 code enforcement regulations and the King County Comprehensive Plan.
5. There is no serious argument to be made that the covenants recorded by the developer of Eastgate Addition Division D concurrently with but separate from the final plat are anything but private restrictions beyond the enforcement authority of DDES specifically and King County generally. These restrictions are regarded to be equitable covenants that are privately enforceable based on the intent of the parties as evidenced by the language of the recorded document. See, e.g., *Hollis v. Garwall*, 137 Wn 2d, 683 (1999). There are no provisions within either KCC Title 19A or RCW Chapter 58.17 that authorize the enforcement of an entirely private covenant within a public review of a short plat application. The Appellants’ argument that private covenants and easements should be deemed land use controls within the meaning of RCW 58.17.195 is an untenable position. RCW 58.17.195 requires a short subdivision to be found to conform with “any applicable zoning ordinance or other land use controls which may exist”. As indicated by the context and the use of the term “other”, a land use control must be an ordinance and cannot be a private covenant. That a land use control must be an ordinance is made even more clear by the language within RCW 58.17.033(1), which refers to “zoning or other land use control ordinances”.

6. The more interesting question is whether a note that appears on the face of the recorded plat should be accorded a public status greater than a private restrictive covenant and becomes therefore an enforceable requirement within the review process for the re-division of an existing lot. It seems likely that in the good old days plat notes were originally no different in legal effect from private restrictive covenants and simply regarded as another form of equitable covenant. See the discussion within *Hollis v. Garwall* cited above. But as public requirements for plat approval have become more detailed and complex, a practice has emerged whereby the public agency in conferring plat approval may condition such approval on conformity with plat notes that the agency itself dictates both as to form and content. Under such circumstances it is an oversimplification to assert that the traditional equitable covenant analysis is sufficient.
7. A lengthy footnote appended to the July 7, 2006 DDES memorandum in support of its summary judgment motion contains a useful and enlightening history regarding the genesis of the Eastgate Addition Division D plat note quoted above. A King County Board of County Commissioners platting resolution no. 11048 enacted in 1948, which was in effect in 1954 when the Eastgate Addition Division D was recorded, required language against re-division largely as specified in the Eastgate plat note. The primary difference between the language of the resolution and the plat note itself is that the note prohibits without exception any re-division of a lot while the resolution ties the minimum lot size to “the area required for the use district”. As recited within the DDES footnote, resolution 11048 was replaced in 1957 by resolution 17491. In 1999 with the enactment of KCC Title 19A all lot size restrictions were dropped from the subdivision ordinance and conformity with Title 21A zoning requirements were mandated instead.
8. It is clear that the Eastgate Addition Division D plat note restricting re-division of the subdivision lots contains an element of public interest to the extent that it was based on an adopted county resolution in existence at the time of plat approval which prohibited re-division of the lots below the zoning base density. The question is whether a public interest component created in 1954 operates to compel its enforcement in the present proceeding as a requirement for short plat approval.

Within the code enforcement provisions stated in KCC Title 23, the definition of “civil code violation” at KCC 23.02.010B.2 includes “any act or omission contrary to the conditions of any permit.” Further, the definition of “permit” stated at KCC 23.02.010F contains the following statement: “All conditions of approval, and all easements and use limitations shown on the face of an approved final plat map which are intended to serve or protect the general public are deemed conditions applicable to all subsequent plat property owners and their tenants and agents as permit requirements enforceable under this title.” Since compliance with Title 23 is required by the subdivision review process authorized by KCC 19A.08.060, it may be argued that the Eastgate Addition Division D plat note at issue qualifies as a permit condition within the meaning of KCC 23.02.010 and should be enforced within the short plat review.

9. It cannot be denied that the Eastgate Addition Division D plat note against re-division is a use limitation shown on the face of an approved final plat within the meaning of KCC 23.02.010F. The critical questions are therefore whether this note was “intended to serve or protect the general public” and, if so, what is the scope of this intended protection. From the language of platting resolution no. 11048 it is evident that the public purpose underlying the note was to prevent re-division of a lot in contravention of the minimum area requirements of the zoning code. Moreover, as the zoning code evolves the minimum lot area requirement enforced by the plat note necessarily evolves with it. Thus the public policy manifested by the plat note in 2006 is to prohibit re-division of the Eastgate Addition Division D lots below current zoning requirements. Since it is undisputed that the proposed short plat re-division meets current R-6 zoning standards, the G-Box Short Plat is not in conflict with the public interest purpose of the plat note.

10. Clearly an additional argument can be made on the basis that the actual language of the Eastgate Addition Division D plat note goes further than the minimum area requirements of resolution 11048 in that it prohibits any re-division of the plat lots, not merely their re-division to an area below zoning standards. But this stricter reading of the plat note is not supported by the public interest in the manner required by KCC 23.02.010F. Accordingly, this more expansive reading is not enforceable pursuant to the procedures contained in Title 23. Rather, this stricter requirement is purely private in nature, and if currently valid, is enforceable only as a private covenant through a Superior Court action. Once it determined that current zoning requirements were met, DDES was correct in concluding that it had no further authority to enforce either the plat note or the separate private covenant and that such restrictions provided no regulatory basis for disapproving the G-Box Short Plat application. The action of DDES in approving the G-Box Short Plat application was correct as a matter of law, and its motion for summary judgment should be granted.

ORDER:

The DDES motion for summary judgment dismissing the short plat appeal of Nancy and Dean Uttech, George and Patricia Henderson and the Neighborhood Protection Association is GRANTED. The appeal of the G-Box, LLC Short Plat approval is DISMISSED and the appeal hearing scheduled for August 1, 2006 is canceled.

ORDERED this 21st day of July, 2006.

Stafford L. Smith
King County Hearing Examiner

TRANSMITTED this 21st day of July, 2006, to the following parties and interested persons:

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